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REMARKS

Status Summary

Claims 1-22 are pending in the present application. Claims 1-22 presently stand rejected under 35 U.S.C. § 102(b). Claims 1, 9, 17, 18, and 20 have been amended herein to better clarify and more particularly claim the present subject matter. No new matter has been added.

Claim Rejections - 35 U.S.C. § 102

Claims 1-22 presently stand rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,726,178 to Mallaney et al. ("Mallaney"). It is the Examiner's position that Mallaney discloses a retaining flap (reference **50**) on a different and perpendicular axis with the axis of the chute flap, a chute flap (reference **38**) with a different axis of pivot than the retaining flap, and a biased chute flap. With reference to the amendments in Amendment A, it is also the Examiner's position that Mallaney discloses the retaining flap being attached to the housing (at reference **52**) and the second portion of the retaining flap being generally disposed perpendicularly to the first section, i.e., the horizontal section. The Examiner also states that the structure disclosed by Mallaney renders method claims 18-21 inherent. These positions are respectfully traversed as described further below.

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Mallaney discloses a discharge cover assembly for a mowing machine. Figures 3 and 4 most clearly show a cover assembly **38** which includes a planar member **40** and a cover **44**. Planar member **40** is mounted to a planar deck **20** through a front pivot **42** which allows the cover assembly **38** to pivotally move from a position where it overlies and covers the discharge opening **24**, to an open position wherein the mower is adapted for a side discharge operation. As shown in Mallaney and specifically described (for example beginning at column 3, line 24), the rear end of the planar member **40** is connected to the planar deck **20** by a strap **50**, pivot **52** attached to the housing, and a post **54** attached to cover assembly **38** with a wing nut **56**. In this manner, strap **50** is attached to deck **20** on one end of strap **50** and to the cover assembly **38** on the opposite end or portion of strap **50**. Cover assembly **38** can move or pivot on pivot **42** and post **54**, and strap **50** can rotate about pivot **52** and post **54** wherein the position of post **54** within slot **58** of strap **50** allows for such outward movement of cover assembly **38** and strap **50** away from the original position against deck **20**.

By the above amendments, independent claim 1 has been amended to better clarify the subject matter of the present disclosure. Specifically, claim 1 now recites that the retaining flap is moveably attached to the housing for movement of at least a portion of the retaining flap in an at least generally vertical direction away from the housing. Support for this amendment can be found throughout the application, including the drawings, as originally filed. Mallaney teaches and discloses that the strap **50** is connected and attached with the cover assembly **38** at all times. Such

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connection is required for proper functioning and operation of the cover assembly 38, wherein the cover assembly 38 is held in an opened or a closed position by means of wing nut 56 on post 54 being tightened on strap 50. Furthermore, the cover assembly 38 of Mallaney comprises two principal pieces of the planar member 40 and the cover 44 wherein the cover 44 is connected to the planar member 40, which in turn is connected to the planar deck 20 through pivot 42 and strap/pivot 50/52. The only movement of strap 50 (which the Examiner refers to as the retaining flap) is around pivot 52 in an outwardly direction parallel with the planar deck to which it is attached. There is no teaching or suggestion by Mallaney of a retaining flap that is moveably attached to the housing of a mowing machine and where at least a portion of the retaining flap is movable in an at least generally vertical direction away from the housing. There is also no teaching or suggestion by Mallaney of such a retaining flap that is movable between a retaining position and a non-retaining position where the retaining flap can in its retaining position provide support to maintain the chute flap in either its closed or open chute flap position. As such, it is respectfully submitted that the rejection of claim 1 and its depending claims under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 9 has been amended as set forth above and, like claim 1, recites that the retaining flap is moveably attached to the housing of the mowing machine for movement of at least a portion of the retaining flap in an at least generally vertical direction away from the housing. The claim additionally recites that the retaining flap is selectively movable independent of the chute flap between a

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retaining position and a non-retaining position and that the retaining flap is adapted to overlap at least a portion of the chute flap to maintain the chute flap in its closed chute flap position. The arguments set forth above with respect to claim 1 relating to the teaching of Mallaney of strap **50** movement exclusively in a direction parallel to the planar deck apply with respect to claim 9 as well. In light of the above, it is respectfully submitted that the rejection of claim 9 and its depending claims under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 17 has been amended as set forth above to recite that at least a portion of the retaining flap is moveable in a direction at least generally vertically away from the housing. The claim additionally recites that the second section of the retaining flap is adapted to overlap at least a portion of the chute flap to maintain the chute flap in its closed chute flap position. With reference to Figure 10 of Mallaney, the Examiner contends that the second portion of the retaining flap (strap **50**) of Mallaney is generally disposed perpendicularly to the first section. Applicant respectfully disagrees. Strap **50** of Mallaney has two horizontal portions, a first one that attaches to planar deck **20** at pivot **52** and a second one that attaches to planar member **40** at post **54**. Both of these sections are in the same plane parallel to the planar deck (i.e., are not perpendicular to one another). The angled section of strap **50**, shown at an approximately 45 degree angle in Figure 10 of Mallaney, is designed for the purpose of elevation change of strap **50** between pivot **52** and post **54** and has no contact with planar deck **20** or planar member **40**. Even assuming that the angled section was perpendicular to the two horizontal portions of strap **50**

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for purposes of elevation change, this angled section is neither pivotally attached to the housing surface (as is the first section of the retaining flap of the present subject matter), nor is it adapted to overlap at least a portion of the chute flap (as is the second section of the retaining flap of the present subject matter). Therefore, there is no teaching or suggestion in Mallaney of a retaining flap with a first section pivotally attached to the housing and a second section disposed at least generally perpendicularly to the first section wherein the second section is adapted to overlap at least a portion of the chute flap. Additionally, the arguments set forth above with respect to claim 1 and 9 relating to the teaching of Mallaney of strap 50 movement only in a direction parallel to the planar deck apply with respect to claim 17. Applicant respectfully submits therefore that the rejection of claim 17 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Independent claim 18 as amended is directed to a method for moving a chute apparatus of a mowing machine and recites lifting a retaining flap moveably attached to a housing on a mowing machine wherein at least a portion of the retaining flap moves in a direction at least generally vertically away from the housing, and wherein the retaining flap moves from a retaining position to a non-retaining position to allow a chute flap attached to the mowing machine to move from a closed position to an open position whereby the chute flap provides a discharge chute. As discussed above, there is no teaching or suggestion in Mallaney of a chute flap being allowed to move from a closed position to an open position by lifting of a retaining flap in a direction at least generally vertically away from the housing of a mowing machine.

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The cover **44** of Mallaney is connected to the planar member **40**, which in turn is connected to planar deck **20** through pivot **42** and strap/pivot **50/52**. The only movement of strap **50** is around pivot **52** in an outwardly direction parallel with the planar deck to which it is attached. Applicant respectfully submits that the rejection of independent claim 18 and dependent claim 19 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

Amended independent claim 20 is directed to a method for moving a chute apparatus of a mowing machine and recites a step of lifting a retaining flap moveably attached to a housing on a mowing machine from a retaining position to a non-retaining position by pivoting the retaining flap along a first axis wherein at least a portion of the retaining flap moves in a direction at least generally vertically away from the housing for the retaining flap to allow a chute flap attached to the mowing machine to pivot along a second axis from a closed position to an open position whereby the chute flap provides a discharge chute. As discussed above with respect to claim 18, there is no teaching or suggestion in Mallaney of a chute flap being allowed to move from a closed position to an open position by lifting of a retaining flap in a direction at least generally perpendicular to the surface or deck of a mowing machine. Claim 20 further recites that the first axis on which the retaining flap is pivoted and the second axis on which the chute flap is pivoted are substantially perpendicular to one another. There is no teaching or suggestion in Mallaney of a retaining flap and a chute flap as claimed being substantially perpendicular to one another. Applicant respectfully submits that the rejection of independent claim 20

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and dependent claim 21 under 35 U.S.C. § 102(b) based upon Mallaney should be withdrawn.

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CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above amendments and remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON & TAYLOR, P.A.

Date: Feb. 7, 2005

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